

The Honorable John C. Coughenour

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KIM BAROVIC, derivatively on behalf of
MICROSOFT CORPORATION,

Plaintiff,

v.

STEVEN A. BALLMER, DINA D. DUBLON,
WILLIAM H. GATES III, MARIA M. KLAWE,
STEPHEN J. LUCZO, DAVID F.
MARQUARDT, CHARLES H. NOSKI,
HELMUT PANKE, JOHN W. THOMPSON,
PETER S. KLEIN, BRAD SMITH and B.
KEVIN TURNER,

Defendants,

and

MICROSOFT CORPORATION,

Nominal Defendant.

STEPHEN DIPHILOPO, derivatively on behalf of
MICROSOFT CORPORATION,

Plaintiff,

v.

STEVEN A. BALLMER, DINA D. DUBLON,
WILLIAM H. GATES III, MARIA M. KLAWE,

Case No.: 2:14-cv-00540-JCC

**STIPULATION CONSOLIDATING
RELATED ACTIONS, APPOINTING
CO-LEAD COUNSEL AND LIAISON
COUNSEL AND RELATED MATTERS
AND [PROPOSED] ORDER THEREON**

Noted for Consideration: May 20, 2014

Case No. 2:14-cv-00586-JCC

STEPHEN J. LUCZO, DAVID F.
MARQUARDT, CHARLES H. NOSKI,
HELMUT PANKE, JOHN W. THOMPSON,
PETER S. KLEIN, BRAD SMITH and B.
KEVIN TURNER,
Defendants,
and
MICROSOFT CORPORATION,
Nominal Defendant.

WHEREAS, there are presently two related shareholder derivative actions (the “Actions”) against certain current and former officers and directors of Microsoft Corporation (“Microsoft” or the “Company”) on file in this Court;

WHEREAS, the Actions meet the definition of LCR 3(f)(2)(A) and/or(B) because, among other things, the Actions arise out of the same alleged transactions and occurrences and involve the same or substantially similar alleged issues of fact and law, and, therefore, are related and should be consolidated for all purposes pursuant to Rule 42 of the Federal Rule of Civil Procedure (hereinafter referred to as the “Consolidated Action”);

WHEREAS, in an effort to facilitate and ensure consistent rulings and decisions, as well as the avoidance of unnecessary duplication of effort, each of the undersigned counsel, on behalf of all parties (defined herein) in the Actions enter into this stipulation. The parties and counsel are: (1) The Weiser Law Firm, P.C., Law Office Of Alfred G. Yates, Jr., P.C., and Badgley Mullins Turner PLLC on behalf of plaintiff Kim Barovic (“Barovic”); (2) Ryan & Maniskas, LLP and Badgley Mullins Turner PLLC on behalf of plaintiff Stephen DiPhilipo (“DiPhilipo”); (3) Davis Wright Tremaine LLP on behalf of defendants Steven A. Ballmer, Dina D. Dublon, William H. Gates III, Maria M. Klawe, Stephen J. Luczo, David F. Marquardt, Charles H. Noski, Helmut Panke, John W. Thompson, Peter S. Klein, Brad Smith and B. Kevin

1 Turner (the “Individual Defendants”); and (4) Orrick, Herrington & Sutcliffe LLP on behalf of
 2 nominal defendant Microsoft.¹

3 WHEREAS, Microsoft and the Individual Defendants take no position as to the
 4 appointment of The Weiser Law Firm, P.C. and Ryan & Maniskas, LLP as Co-Lead Counsel
 5 for Plaintiffs (referred to hereinafter as “Co-Lead Counsel”) and Badgley Mullins Turner PLLC
 6 as Liaison Counsel for Plaintiffs (referred to hereinafter as “Liaison Counsel”), but agree that
 7 the appointment of Co-Lead Counsel and Liaison Counsel facilitates the orderly progress and
 8 organization for litigation of the Consolidated Action;
 9

10 WHEREAS, Barovic, DiPhilipo, Microsoft and the Individual Defendants (collectively,
 11 the “Parties”) agree that it would be duplicative and wasteful of the Court’s resources for
 12 Defendants to have to respond to the individual complaints filed in the Actions pending the
 13 agreed-upon consolidation. Therefore, the Parties agree that, following entry of this order (the
 14 “Consolidation Order”), the following schedule shall apply:

- 15 • Plaintiffs shall have 30 days from the entry of this Order to file and serve a single
 16 Consolidated Complaint. The Consolidated Complaint will supersede all existing
 17 complaints filed in the separate actions. Defendants need not respond to any of
 18 the pre-existing complaints.
 19
- 20 • Within 45 days after the filing and service of the Consolidated Complaint,
 21 Defendants shall file and serve their answers or Motions in response. This
 22 stipulation is without prejudice to the right of the Individual Defendants to file a
 23

24 ¹ Collectively, Microsoft and the Individual Defendants shall be referred to as “Defendants.” As
 25 used herein, the term “Plaintiffs” refers to Barovic, DiPhilipo and any plaintiff in any Related
 26 Case (as defined herein) that may in the future be consolidated with, and into, the Consolidated
 Action.

Fed.R.Civ.P. 12 motion to dismiss after the Court has decided Microsoft's motion to dismiss. Prior to filing any Motion(s), counsel for Defendants shall confer with Co-Lead Counsel concerning a mutually agreeable proposed date for the initial noting of the Motion(s) for consideration on the Court's motion calendar.

- Plaintiffs, through Co-Lead Counsel, shall have 45 days to respond (the "Opposition") to Defendants' motion(s) or answer(s). If more than one Motion is filed, Co-Lead Counsel, on behalf of Plaintiffs, shall be permitted to file one consolidated Opposition of a total page length equal to the collective total of the pages of briefing submitted by Defendants in support of their Motion(s).
- Defendants shall have 30 days to reply to Plaintiffs' response.²

Defendants need not file any response to the complaints on file until the time provided above. No party is waiving any rights, claims, or defenses of any kind except as expressly stated herein.

Now, therefore, the Parties hereto stipulate and the Court ORDERS as follows:

I. CONSOLIDATION OF THE RELATED SHAREHOLDER DERIVATIVE ACTIONS

The following actions are hereby related and consolidated for all purposes, including pre-trial proceedings and trial (the "Consolidated Action"):

² The Parties agree to confer in good faith should any of the Parties, following entry of the Consolidation Order, require a further stipulation (and proposed order thereon) seeking to modify the provision of the Consolidation Order as to the Consolidated Complaint or to continue the dates set for the filing, briefing or hearing of the Motion(s).

<u>Abbreviated Case Name</u>	<u>Case No.</u>	<u>Date Filed</u>
<i>Barovic v. Ballmer, et al.</i>	2:14-cv-00540 JCC	April 11, 2014
<i>DiPhilipo v. Ballmer, et al.</i>	2:14-cv-00586 JCC	April 18, 2014

II. CAPTION OF CONSOLIDATED ACTION

Every pleading filed in the Consolidated Action, or in any separate action included therein, shall bear the following caption:

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

BAROVIC V. BALLMER, ET AL.)	Lead Case No. 2:14-cv-00540 JCC
)	
)	
)	(Consolidated with Case No. 2:14-cv-
This Document Relates To:)	00586 JCC)
)	
)	
ALL ACTIONS)	

III. MASTER DOCKET

The files of the Consolidated Action shall be maintained in one file, under Lead Case No. 2:14-cv-00540. When a document being filed pertains to all of the actions included within the Consolidated Action, the phrase "All Actions" shall appear immediately after the phrase "This Document Relates To:". When a pleading applies only to some, but not all, of the actions included within the Consolidated Action, the document shall list, immediately after the phrase "This Document Relates To:", the docket number for each individual action to which the document applies, along with the last name of the first-listed plaintiff in said action (*e.g.*, "Case No. 2:14-cv-00586 (DiPhilipo)").

IV. ORGANIZATION OF PLAINTIFFS' COUNSEL

Co-Lead Counsel for Plaintiffs for the Consolidated Action is:

THE WEISER LAW FIRM, P.C.
Robert B. Weiser
Brett D. Stecker
Jeffrey J. Ciarlanto
22 Cassatt Avenue, First Floor
Berwyn, PA 19312
Telephone: (610) 225-2677
Facsimile: (610) 408-8062

and

THE WEISER LAW FIRM, P.C.
Kathleen A. Herkenhoff
12707 High Bluff Drive, Suite 200
San Diego, CA 92130
Telephone: (858) 794-1441
Facsimile: (858) 794-1450

and

RYAN & MANISKAS, LLP
Katharine M. Ryan
Richard A. Maniskas
995 Old Eagle School Road, Suite 311
Wayne, PA 19087
Telephone: 484-588-5516
Facsimile: 484-450-2582

Co-Lead Counsel shall have the authority to speak for Plaintiffs in matters regarding pre-trial procedure, trial, and settlement and shall make all work assignments in such manner as to facilitate the orderly and efficient prosecution of the Consolidated Action and to avoid duplicative or unproductive effort.

1 Co-Lead Counsel shall be responsible for coordinating all activities and appearances on
2 behalf of Plaintiffs. No motion, request for discovery, or other pre-trial or trial proceedings
3 shall be initiated or filed by any of the Plaintiffs except through Co-Lead Counsel.

4 Liaison Counsel for Plaintiffs for the conduct of the Consolidated Action is:

5 BADGLEY MULLINS TURNER PLLC
6 Duncan C. Turner
7 19929 Ballinger Way, Suite 200
8 Shoreline, WA 98155
Telephone: (206) 621-6566
Facsimile: (206) 621-9686

9 Defendants' counsel may rely upon all agreements made with Lead Counsel and Liaison
10 Counsel, or other duly authorized representative of Lead Counsel, and such agreements shall be
11 binding on all Plaintiffs.

12 This Consolidation Order shall apply to each case meeting the definition of a "related"
13 case as set forth in LCR 3(f)(2) (A) or (B), or as is otherwise determined by the Court to be a
14 "related" case, including any such actions which are subsequently filed in, removed to, or
15 transferred to this Court (collectively referred to hereinafter as a "Related Case").
16

17 **V. NEWLY FILED, TRANSFERRED OR REMOVED RELATED CASES**

18 When any shareholder derivative action is filed in this Court, transferred to this Court, or
19 removed to this Court that appears to meet the definition of a Related Case or should be
20 considered as a Related Case (and therefore be consolidated with, and into, the Consolidated
21 Action), Co- Lead Counsel shall, upon notice of the existence of the Related Case, promptly file
22 a Notice of Related Case in both the Consolidated Action and in the Related Case, serve a copy
23 of this Consolidation Order (the "Notice") upon counsel of record for the plaintiff(s) in the
24 Related Case and any defendants in such Related Case that have not previously been named in
25
26

1 the Actions (the “Related Case Parties”), and file a proof of service in the Consolidated Action
 2 that such Notice has been given.

3 The Related Case Parties shall have three (3) business days following service of the
 4 Notice to confer with Co-Lead Counsel and counsel for the Defendants. If, following such
 5 conferences, any of the Related Case Parties do not agree that the subject action meets the
 6 definition of a Related Case and shall be subject to all terms of the Order, such Related Case
 7 Parties shall have, ten (10) business days (from service of the Notice) within which to file a
 8 motion for entry of an order excepting such action from the terms of this Consolidation Order
 9 (the “Motion”). Such Motion shall be first noted for consideration on the Court’s motion
 10 calendar by the Related Case Parties pursuant to a stipulated agreement with Co-Lead Counsel
 11 and counsel for Defendants in the Consolidated Action. If, however, following Notice, none of
 12 the Related Case Parties files a Motion within the timeframe and subject to the procedures set
 13 forth herein, the Court shall proceed to conduct any necessary review and enter an order, as
 14 appropriate, directing that the Related Case be consolidated with, and into, the Consolidated
 15 Action and be subject to the terms of this Consolidation Order.
 16

17 **VI. PRESERVATION OF ALL CLAIMS AND DEFENSES**

18 Nothing herein shall be construed as effecting a waiver or concession by any of the
 19 Parties. All Parties preserve all of their claims and defenses.
 20

21 IT IS SO STIPULATED.
 22

23 Dated: May 20, 2014

THE WEISER LAW FIRM, P.C.

24 By: s/Brett D. Stecker

25 BRETT D. STECKER

26 JEFFREY J. CIARLANTO

ROBERT B. WEISER (*pro hac vice* pending)
22 Cassatt Avenue, First Floor
Berwyn, PA 19312
Telephone: (610) 225-2677
Facsimile: (610) 408-8062
Email: bds@weiserlawfirm.com
jjc@weiserlawfirm.com

THE WEISER LAW FIRM, P.C.
KATHLEEN A. HERKENHOFF
12707 High Bluff Drive, Suite 200
San Diego, CA 92130
Phone: (858) 794-1441
Facsimile: (858) 794-1450
Email: kah@weiserlawfirm.com

*[Proposed] Co-Lead Counsel and Counsel for
Plaintiff Kim Barovic*

Dated: May 20, 2014

RYAN & MANISKAS, LLP

By: s/Richard A. Maniskas
Richard A. Maniskas
Katharine M. Ryan
995 Old Eagle School Road, Suite 311
Wayne, PA 19087
Telephone: 484-588-5516
Facsimile: 484-450-2582
Email: rmaniskas@rmclasslaw.com
kryan@rmclasslaw.com

*[Proposed] Co-Lead Counsel and Counsel for
Plaintiff Stephen DiPhilipo*

Dated: May 20, 2014

BADGLEY MULLINS TURNER PLLC

By: s/Duncan C. Turner
Duncan C. Turner
19929 Ballinger Way, Suite 200
Shoreline, WA 98155
Telephone: (206) 621-6566
Facsimile: (206) 621-9686
Email: duncanturner@badgleyturner.com

*[Proposed] Liaison Counsel and Counsel for
Plaintiffs Kim Barovic and Stephen DiPhilipo*

Dated: May 20, 2014

LAW OFFICE OF ALFRED G. YATES, JR., P.C.

Alfred G. Yates, Jr. (*pro hac vice* pending)
Gerald L. Rutledge (*pro hac vice* pending)
519 Allegheny Building
429 Forbes Avenue
Pittsburgh, PA 15219
Telephone: (412) 391-5164
Facsimile: (412) 471-1033
Email: yateslaw@aol.com

Additional Counsel for Plaintiff Kim Barovic

Dated: May 20, 2014

DAVIS WRIGHT TREMAINE LLP

By: s/Brendan Mangan
Stephen Rummage
Brendan Mangan
1201 Third Avenue, Suite 2200
Seattle, WA 98101
Telephone: (206) 757-8260
Facsimile: (206) 757-7260
Email: steверummage@dwt.com
brendanmangan@dwt.com

Counsel for the Individual Defendants

Dated: May 20, 2014

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: s/Daniel J. Dunne
Daniel J. Dunne
George E. Greer
Charles J. Ha
701 Fifth Avenue
Suite 5600
Seattle, WA 98104-7097
Telephone: (206) 839-4395
Facsimile: (206) 839-4301
Email: ddunne@orrick.com

ggreer@orrick.com
charlesha@orrick.com

Counsel for Nominal Defendant Microsoft

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Date: _____